

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MORRIS FIDDLER, individually and )  
on behalf of a class of similarly )  
situated individuals, )

Plaintiff, )

v. )

AT&T MOBILITY LLC, d/b/a The )  
New AT&T f/k/a CINGULAR )  
WIRELESS, a Delaware limited )  
liability company, M-QUBE, INC., a )  
Delaware corporation, and )  
VERISIGN, INC., a Delaware )  
corporation, )

Defendants. )

Case No. 08C416

Judge Der-Yeghiayan

**MOTION OF DEFENDANT AT&T MOBILITY LLC  
TO COMPEL ARBITRATION AND DISMISS CLAIMS**

Pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1–16, defendant AT&T Mobility LLC (“ATTM”) respectfully moves this Court for an order (i) compelling Plaintiff Morris Fiddler to pursue his dispute with ATTM in arbitration or small claims court and (ii) dismissing all claims against ATTM. This Motion is based upon this Motion, the attached Memorandum of Points and Authorities, and the Declarations of Neal S. Berinhout, Richard Nagareda, and Joanne Savage, and all exhibits thereto. In support of this motion, ATTM states as follows:

1. On December 17, 2007, plaintiff Morris Fiddler filed a putative class-action complaint against defendants AT&T Mobility, LLC, m-Qube, Inc., and Verisign, Inc. in the Chancery Division of the County Department of the Circuit Court of Cook County, alleging that ATTM customers were improperly charged for “premium mobile content” such as text messages, ringtones, and the like. Fiddler alleges that defendants have violated the Illinois computer tampering statute, 720 ILCS 5/16D-3, and the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* He also raises a variety of common-law claims.

2. On January 18, 2008, m-Qube, Inc. and Verisign, Inc. timely filed a Notice of Removal to this Court.

3. In the course of activating his cellular telephone for wireless service from ATTM, Fiddler agreed to arbitrate his disputes with ATTM. Declaration of Neal S. Berinhout ¶¶ 6, 32-33. Fiddler's arbitration agreement specifies that arbitration must be conducted on an individual rather than class-wide basis. *Id.* Ex. 2 at 1.

4. The Federal Arbitration Act ("FAA") provides that written agreements to arbitrate disputes "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA governs the enforceability of the arbitration agreement between the plaintiff and ATTM. *See id.*

5. Because the plaintiff's arbitration agreement covers all of his claims against ATTM, the Court should compel him to pursue his claims in arbitration or small claims court. *Id.* § 4.

6. When, as here, all of the claims against a defendant are subject to a binding arbitration agreement, the Court should dismiss them. *See Deputy v. Lehman Bros., Inc.*, 374 F. Supp. 2d 695, 711 (E.D. Wis. 2005) ("A court may dismiss a case if all of the issues raised before it are arbitrable."); *accord, e.g., Choice Hotels Int'l, Inc. v. BSR Tropicana Resort, Inc.*, 252 F.3d 707, 709 (4th Cir. 2001) ("[D]ismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable."); *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) ("The weight of authority clearly supports dismissal of the case when all of the issues raised in the district court must be submitted to arbitration.").

WHEREFORE, ATTM respectfully requests that this Court compel arbitration pursuant to 9 U.S.C. § 4 and dismiss all claims against ATTM.

Dated: February 7, 2008

Respectfully submitted,

/s/ Victoria R. Collado

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**CERTIFICATE OF SERVICE**

I, Sarah E. Reynolds, an attorney, hereby certify that a true and correct copy of **MOTION OF DEFENDANT AT&T MOBILITY LLC TO COMPEL ARBITRATION AND DISMISS CLAIMS** was served on the following counsel of record via electronic delivery on February 7, 2008:

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Respectfully submitted,

/s/Sarah E. Reynolds

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Dated: February 7, 2008